

Reply to the Notice of Non-Compliant Appeal Brief of February 9, 2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of

Atty. Docket: NL 021259

GILLIAN ANTOINETTE MIMNAGH-KELLEHER ET AL.

Confirmation No. 8406

Serial No. 10/537,877

Group Art Unit: 2856

Filed: JUNE 7, 2005

Examiner: SHAH, SAMIR M.

Title: ACTIVITY MONITORING

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Board of Patent Appeals and Interferences
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

CORRECTED APPEAL BRIEF

Sir:

Appellants herewith respectfully presents a Grounds of Rejection To Be Reviewed on Appeal responsive to the Notice of Non-Compliant Appeal Brief mailed on February 9, 2009 as follows:

Please delete the previously submitted Grounds of Rejection To Be Reviewed on Appeal section and Argument section, and substitute the following Grounds of Rejection To Be Reviewed on Appeal section and Argument section included herein.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 26-35 of U.S. Patent Application Serial No. 10/537,877 are anticipated under 35 U.S.C. §102(e) by U.S. Patent No. 6,436,052 (Nikolic);

Whether claims 26-35 of U.S. Patent Application Serial No. 10/537,877 are unpatentable under 35 U.S.C. §103(a) over U.S. Patent No. 6,122,960 (Hutchings) in view of Nikolic; and

Whether claims 26-28, 30-33 and 35 of U.S. Patent Application Serial No. 10/537,877 are unpatentable under 35 U.S.C. §103(a) over U.S. Patent No. 6,160,478 (Jacobsen) in view of Nikolic.

ARGUMENT

Claims 26-35 are said to be anticipated by Nikolic.

Hereinafter, Appellants respectfully request the Board to address the patentability of independent claims 26 and 31, and further claims 27-30 and 32-35 as depending from independent claims 26 and 31, based on the requirements of independent claims 26 and 31. This position is provided for the specific and stated purpose of simplifying the current issues on appeal. However, Appellants herein specifically reserve the right to argue and address the patentability of claims 27-30 and 32-35 at a later date should the separately patentable subject matter of claims 27-30 and 32-35 later become an issue. Accordingly, this limitation of the subject matter presented for appeal herein, specifically limited to discussions of the patentability of independent claims 26 and 31 is not intended as a waiver of Appellants' right to argue the patentability of the further claims and claim elements at that later time.

A careful review of Nikolic reveals that Nikolic mentions a look-up table just once, namely on column 7, lines 22-31, which

recites:

In step 310 the acceleration output or data for each axis is added to a cumulative sum for the corresponding axis. The acceleration data is compared to the minimum and maximum values of the information obtained in step 305. If the data point is a new minimum or maximum, the data point is saved on storage device 250 of FIG. 2. By way of example, this can be done by employing a look-up table in ROM and taking the magnitude of the resultant values, or alternatively by designating one axis to determine the maximum and minimum data points.

Further, a careful reading of column 7, lines 22-31, indicates that the Nikolic look-up table is used to determine "new minimum or maximum" of raw data, i.e., of acceleration data output from the Nikolic accelerometer. There is simply no teaching or suggested in Nikolic of producing "a magnitude of the vector using a lookup table of stored magnitudes [of vectors] and associated vector components," as recited in independent claim 26, and similarly recited in independent claim 31. (Illustrative emphasis provided)

The above noted section of Nikolic specifically recites "employing a look-up table in ROM and taking the magnitude of the resultant values." This clearly indicates that the Nikolic look-up table does not store any "magnitude", but rather stores other

values. Once the values stored in the Nikolic look-up table are determined or read as "resultant values," then the magnitude of the resultant values is determined, which magnitude is NOT determined from any magnitude values stored in the Nikolic look-up table.

The Nikolic look up table merely stores raw data, and does not store any magnitudes of vectors, as recited in independent claims 26 and 31. Surely, if it was obvious "to produce a magnitude of the vector using a lookup table of stored magnitudes," then Nikolic would have at least suggested doing so.

Instead of producing "a magnitude of the vector using a lookup table of stored magnitudes," as recited in independent claims 1 and 31, Nikolic calculates "the dynamic acceleration magnitude ... through the use of ... equations," as specifically recited on column 12, lines 43-47, and column 18, lines 9-11. (Emphasis added)

Further, column 23, lines 6-8 of U.S. Patent No. 6,452,961 (Van Wechel), recited in the last paragraph of the Advisory Action of December 11, 2007, merely recites that other "methods for computing or approximating the magnitude of a vector include the

use of lookup table." It is respectfully submitted that this recitation of Van Wechel, as well as any disclosure in Nikolic, do not teach or suggest that the lookup table stores "magnitudes and associated vector components," as recited in independent claims 26 and 31.

Claims 26-35 are said to be unpatentable over Hutchings in view of Nikolic.

As correctly noted on page 8, last paragraph of the Final Office Action (and page 11, third full paragraph), Hutchings (and Jacobsen) do not teach or suggest the present invention as recited in independent claim 26, which recites (illustrative emphasis provided):

to process the sensor signals as vector components of a vector to produce a magnitude of the vector using a lookup table of stored magnitudes and associated vector components.

or as recited in independent claim 31, which recites (illustrative emphasis provided):

producing sensor signals indicative of motion of a plurality of motion sensors; and processing the sensor signals as vector

components of a vector to produce a magnitude of the vector using a lookup table of stored magnitudes and associated vector components.

Nikolic is cited in an attempt to remedy the deficiencies in Hutchings. As described above Nikolic, as well as any disclosure in Van Wechel, do not teach or suggest that the lookup table stores "magnitudes and associated vector components," as recited in independent claims 26 and 31. Thus, Nikolic and Van Wechel do not remedy the deficiencies in Hutchings.

Claims 26-28, 30-33 and 35 are said to be unpatentable over Jacobsen in view of Nikolic.

As correctly noted on page 11, third full paragraph of the Final Office Action, Jacobsen do not teach or suggest the present invention as recited in independent claim 26, which recites (illustrative emphasis provided):

to process the sensor signals as vector components of a vector to produce a magnitude of the vector using a lookup table of stored magnitudes and associated vector components,

or as recited in independent claim 31, which recites (illustrative emphasis provided):

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producing sensor signals indicative of motion of a plurality of motion sensors; and processing the sensor signals as vector components of a vector to produce a magnitude of the vector using a lookup table of stored magnitudes and associated vector components.

Nikolic is cited in an attempt to remedy the deficiencies in Jacobsen. As described above Nikolic, as well as any disclosure in Van Wechel, do not teach or suggest that the lookup table stores "magnitudes and associated vector components," as recited in independent claims 26 and 31. Thus, Nikolic and Van Wechel do not remedy the deficiencies in Jacobsen.

Based on the foregoing, it is respectfully submitted that independent claims 26 and 31 are allowable, and allowance thereof is respectfully requested. In addition, it is respectfully submitted that claims 27-30 and 32-35 should also be allowed at least based on their dependence from independent claims 26 and 31.

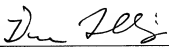
In addition, Appellants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the

presented remarks. However, the Appellants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

CONCLUSION

In view of the above, it is respectfully submitted that the Brief on Appeal is compliant and consideration on the merits is respectfully requested.

Respectfully submitted,

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